

## The Internet and Law Enforcement Surveillance:

### Extension of CALEA to the Internet Would Be Unlawful, Unnecessary and Unwise

May 20, 2004



CDT opposes the FBI's requests that the FCC extend the Communications Assistance for Law Enforcement Act ("CALEA") to the Internet and that the FCC impose a new regulatory process to allow the FBI and FCC to review and approve new communications protocols, applications, or services before they can be deployed. In April, CDT joined a diverse array of communications companies, trade associations, industry coalitions and public interest groups in a Joint Statement to the FCC cautioning that the FBI's proposal is unlawful, unwise and unnecessary. Signers included conservative organizations such as Americans for Tax Reform and Free Congress Foundation; civil liberties organizations such as the ACLU and Electronic Frontier Foundation; and trade associations such as the Computer and Communications Industry Association, Computing Technology Industry Association, Information Technology Association of America, and the Voice on the Net (VON) Coalition. That Joint Statement of Industry and Public Interest is available at [http://www.cdt.org/digi\\_tele/20040427jointcaleareply.pdf](http://www.cdt.org/digi_tele/20040427jointcaleareply.pdf).

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**Unlawful.** CALEA was adopted in 1994 in response to law enforcement concerns that wiretaps would be more difficult in digital telephone networks. CALEA required telecommunications common carriers to design basic wiretap capabilities into their telephone networks. However, Congress decided in 1994 that CALEA should not apply to the Internet and "information services" carried over it, and rejected FBI proposals that would have gone that far. VoIP, email, Instant Messaging and other forms of Internet communications are information services and thus are not covered by CALEA. Although ISPs and Internet application providers must (and do) comply with interception orders under the wiretap laws, they have not had to design their networks and services to meet FBI specifications. Extending CALEA to the Internet would require Congressional action; if Congress takes up the issue, it can consider problems that have plagued CALEA implementation to date.

**Unwise.** There is almost universal agreement that CALEA has not worked well in the PSTN world. As it was implemented, the CALEA statute gave the FBI very precise design control over telephone switching software. Over the course of several years of regulatory proceedings and litigation, the FBI was able to convince the FCC to mandate a long list of very specific features, including – at substantial cost – features that gave the government capabilities going beyond those that had been available in older phone systems. The Inspector General of the Department of Justice issued a report last month confirming that the FBI's insistence that industry meet every last requirement contributed to delay and much higher costs. If the FCC extended this fundamentally broken regime to the Internet, it would unnecessarily drive up costs for businesses and consumers; impair innovation and drive technology development offshore; and threaten privacy and security.

**Unnecessary.** The FBI has not presented a factual record demonstrating the concrete problems that it is attempting to address. Internet (or "packet") technology currently available for voice and data are tappable at one or more points in the networks, and the Internet is already subject to the wiretap laws. Service providers are quite willing to work with law enforcement to satisfy interception orders quickly and fully when they receive them. But last year, only 12 of the 1,442 state and federal wiretap orders were issued for computer communications, and the FBI has not argued that it had difficulty implementing any of those 12 wiretaps. While CDT respects legitimate law enforcement concerns, the FBI must demonstrate precisely why it wants to impose such an enormously disruptive and expensive burden on the Internet – and it must go to Congress, which unlike the FCC, has the authority to consider its request.

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